



**UNITED STATES DEPARTMENT OF COMMERCE
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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08/654,600 05/29/96 MIZELL

R 5383

EXAMINER

PM82/1002

MILES & STOCKBRIDGE, P.C.
1751 PINNACLE DRIVE
SUITE 500
MCLEAN VA 22102-3833

ROWAN, K

ART UNIT

PAPER NUMBER

3643

DATE MAILED:

10/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/654,600

Applicant(s)
MIZELL

Examiner
KURT ROWAN

Art Unit
3643



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 24, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-13 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13, 2-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over W.L.

Tedders and W.B.Wood: A Trap for Monitoring Pecan Weevils. (Tedders hereinafter).

The article by Tedders discloses an apparatus for capturing target species insects. Tedders discloses a first and second fins which are disposed in vertical planes. The fins extend radially outward from a common longitudinal axis defined by a line of intersection of the vertical planes. The fins are wider at a base portion and narrower at a top portion. Tedders shows a surface of the first and second fins defining opposing channel surfaces with portions that are directly exposed to the environment and target species. The channels narrow toward the top portion. The exposed portions may be seen by members of the target species. Tedders discloses that the base is painted brown or white which is a color which reflects light having a wavelength which attracts the target species. Tedders discloses a top portion comprising a 2 liter cylindrical plastic container and a screen funnel nestled into and fixed to the mouth of the plastic container to form the trap. Hence the channels formed by the first and second fins terminates within the receptacle.

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In reference to claim 13, Tedders shows all of the elements recited with the possible exception of the receptacle being open only at the entrance opening. Tedders does not disclose this but probably is open only at the entrance opening to any meaningful extent, but at any rate, it would have been obvious to have employ a receptacle open only at the entrance opening (which would preclude a screen top for example) since the function is the same and no stated problem is solved. The examiner takes Official Notice that receptacles open only at the entrance opening are old and well known. It should be pointed out that on page 7 of the specification, line 5, it is stated that the top portion is preferable screen-like. In reference to claims 3, 5 and 6, Tedders discloses 4 triangular fins that are right triangles joined at the longest side which is not the hypotenuse such that the shortest sides form the base of the bottom portion. In reference to claims 4, Tedders does not disclose the angle of the fins opposite the longitudinal axis being between 60 and 80 degrees, but it would have been obvious to employ an angle of between 60-80 degrees since routine experimentation would determine to optimum angle. In reference to claims 7, 10, Tedders discloses reflectance rates for different colored bases such as white and brown. It would have been obvious to use routine experimentation to determine the optimum colors and the reflectance of these colors. See *In re Aller*, 105 USPQ 233, 235. In reference to claim 8, Tedders discloses a height of 122 cm for the height of the triangular pieces but the funnel would cover some of that. Hence it appears that the bottom would have a height of about less than 120 cm. At any rate it would have been obvious to employ to height of from between about 30-120 cm since routine experimentation would be used to determine the best trap size. In reference to claim 9, Tedders

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discloses the base contains means for anchoring the unit to the ground as two large gutter nails.

In reference to claim 11, it appears that the top portion of Tedders admits ambient light into the interior of the chamber and onto a channel surface since a plastic cylinder is employed. Also, the examiner takes Official Notice that it is old and well known to admit light into the trap to attract insects. In reference to claim 12, Tedders does not disclose a screening (does this conflict with claim 13 ??) and discloses a plastic container, but it would have been obvious to employ an old and well known screening. The examiner takes Official Notice that screening is old and well known for insect traps.

3.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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A handwritten signature in black ink, reading "Kurt Rowan". The signature is written in a cursive style with a large, stylized "K" and "R".

KURT ROWAN

PRIMARY EXAMINER

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October 1, 2001